



FEDERAL TRADE COMMISSION

16 CFR Part 304

RIN 3084-AB34

Rules and Regulations under the Hobby Protection Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: As part of its regular review of all its Rules and Guides, and in response to Congressional amendments to the Hobby Protection Act (“Hobby Act” or “Act”), the Federal Trade Commission (“Commission”) amends its Rules and Regulations under the Hobby Protection Act (“Rules”).

DATES: This rule is effective November 16, 2016.

FOR FURTHER INFORMATION CONTACT: Joshua S. Millard, (202) 326-2454, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

As part of its ongoing regulatory review program, the Commission published a Federal Register Notice in 2014¹ seeking comment on the costs, benefits, and overall impact of the Rules. After the comment period closed, in December 2014, Congress enacted amendments to the Hobby Act. In response, the Commission published a Notice of Proposed Rulemaking (“NPRM”) earlier this year addressing the comments it received, proposing amendments to the

¹ 79 FR 40691 (July 14, 2014).

Rules to track Congress' changes to the Hobby Act, and posing additional questions.² The NPRM asked, in particular, whether the proposed amendments would appropriately implement Congressional changes to the Act, and what regulatory burden the proposed amendments might impose. The Commission did not receive substantive comments in response to this NPRM, and the record supports amending the Rules as proposed. Accordingly, this Notice describes the background of the Commission's regulatory review, summarizes the record, and explains the grounds for amendments to the Rules. Additionally, it provides analyses required by the Regulatory Flexibility and Paperwork Reduction Acts and sets forth the amended Rules provision.

II. Background

On November 29, 1973, President Nixon signed the Hobby Protection Act, 15 U.S.C. 2101-2106. The Hobby Act requires manufacturers and importers of "imitation political items"³ to "plainly and permanently" mark them with the "calendar year" the items were manufactured. *Id.* 2101(a). The Hobby Act also requires manufacturers and importers of "imitation numismatic items"⁴ to "plainly and permanently" mark these items with the word "copy." *Id.* 2101(b). The Act further directed the Commission to promulgate regulations for determining the "manner and

² 81 FR 23219 (Apr. 20, 2016).

³ An imitation political item is "an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy, or counterfeit of an original political item." 15 U.S.C. 2106(2). The Hobby Act defines original political items as being any political button, poster, literature, sticker or any advertisement produced for use in any political cause. *Id.* 2106(1).

⁴ An imitation numismatic item is "an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item." 15 U.S.C. 2106(4). The Hobby Act defines original numismatic items to include coins, tokens, paper money, and commemorative medals which have been part of a coinage or issue used in exchange or used to commemorate a person or event. *Id.* 2106(3).

form” that imitation political items and imitation numismatic items are to be permanently marked with the calendar year of manufacture or the word “copy.” *Id.* 2101(c).

In 1975, the Commission issued Rules and Regulations Under the Hobby Protection Act, 16 CFR Part 304.⁵ The Rules track the definitions used in the Hobby Act and implement that Act’s “plain and permanent” marking requirements by establishing where the item should be marked, the sizes and dimensions of the letters and numerals to be used, and how to mark incusable and nonincusable items.⁶ In 1988, the Commission amended the Rules to provide additional guidance on the minimum size of letters for the word “copy” as a proportion of the diameter of coin reproductions.⁷

The Commission reviewed the Rules in 2004. That review yielded many comments proposing that the Commission expand coverage to products beyond the scope of the Hobby Act and address problems involving the selling (or passing off) as originals of reproductions of antiques and other items not covered by the Act. However, the Commission retained the Rules without change, noting that it did not have authority under the Hobby Act to expand the Rules as requested.⁸

In 2014, the Commission again requested public comment on the Rules’ costs, benefits, and overall impact.⁹ That comment period closed on September 22, 2014.

⁵ 40 FR 5459 (Feb. 6, 1975).

⁶ Incusable items are items that can be impressed with a stamp.

⁷ 53 FR 38942 (Oct. 4, 1988). Before this amendment, if a coin were too small to comply with the minimum letter size requirements, the manufacturer or importer had to request a variance from those requirements from the Commission. Because imitation miniature coins were becoming more common, the Commission determined that it was in the public interest to allow the word “copy” to appear on miniature imitation coins in sizes that could be reduced proportionately with the size of the item.

⁸ 69 FR 9943 (Mar. 3, 2004).

⁹ 79 FR 40691 (July 14, 2014).

On December 19, 2014, President Obama signed into law H.R. 2754, the Collectible Coin Protection Act (“CCPA”), a short set of amendments to the Hobby Act. The CCPA amends the Act’s scope to address not only the distribution by manufacturers and importers of imitation numismatic items, but also “the sale in commerce” of such items. CCPA, Pub. L. No. 113-288, section 2(1)(A) (2014). Additionally, the CCPA makes it a violation of the Hobby Act “for a person to provide substantial assistance or support to any manufacturer, importer, or seller if that person knows or should have known that the manufacturer, importer, or seller is engaged in any act or practice” violating the marking requirements of the Act. Pub. L. No. 113-288, section 2(1)(B).¹⁰

III. Summary of Comments and Analysis

A. *Initial Request for Comments (2014)*

The Commission received six comments¹¹ in response to its 2014 FRN: four from members of the general public; one from a self-identified professional coin and paper money dealer; and one from an attorney with asserted experience pertaining to coins and other collectibles.

1. Support for the Rules

¹⁰ The CCPA also amends the Hobby Act to expand the permissible venue (*i.e.*, location) for private actions seeking injunctions or damages for violations of the Hobby Act. Previously, a proper venue was “any United States District Court for a district in which the defendant resides or has an agent.” Proper venue now extends to any U.S. District Court for a district in which the defendant transacts business, or wherever venue is proper under 28 U.S.C. 1391. Pub. L. No. 113-288, section 2(2)(A)-(B). Further, the CCPA amends the Hobby Act to state that in cases of violations of the Act involving unauthorized use of a trademark of a collectible certification service, the owners of such trademarks also have rights provided under the Trademark Act of 1946, 15 U.S.C. 1116 *et seq.* Pub. L. No. 113-288, section 2(2)(C).

¹¹ The comments are available on the Commission’s Web site at <http://www.ftc.gov/policy/public-comments/initiative-577>.

All of the commenters who addressed the issue supported the Rules; none advocated rescinding them. For example, one commenter stated, “there [is] a continuing need for the Rules as currently promulgated because . . . they do protect consumers.”¹² Another described the Act as “a boon to collectors of legitimate numismatic and political items,” and stated: “Over the years the presence of the law and supporting regulations has provided guidance for makers of replicas.”¹³ A dealer stated that the Act “is a brilliant effort to help protect the consumer from fraud, and . . . is well thought of across all [l]egitimate [d]ealers.”¹⁴

2. Suggested Rules Modifications

Some commenters suggested modifications to the Rules. In particular, several commenters suggested modifications to address “fantasy coins,” government-issued coins altered by non-governmental entities to bear historically impossible dates or other features marketed as novelties.¹⁵ Commenters variously suggested that the Commission require manufacturers of fantasy coins to stamp such items with a “FANTASY” mark,¹⁶ expressly permit the sale of such items without an identifying mark,¹⁷ or ban such items altogether.¹⁸ One commenter specifically

¹² Comment of Luke Burgess, *available at* <http://www.ftc.gov/policy/public-comments/2014/09/09/comment-00008>.

¹³ Comment of Roger Burdette, *available at* <http://www.ftc.gov/policy/public-comments/2014/09/09/comment-00007>; *see also* Comment of Kenneth Tireman of NC Coppers, *available at* <http://www.ftc.gov/policy/public-comments/2014/07/30/comment-00004>.

¹⁴ Comment of Kenneth Tireman, *supra*.

¹⁵ *See* Comment of Luke Burgess, *supra* (offering example of Roosevelt dime altered to read “1945,” noting that Roosevelt dime was not introduced until 1946, and noting that such coins are not intended to be used as currency).

¹⁶ *See id.*

¹⁷ *See* Comment of Daniel Carr, *available at* <http://www.ftc.gov/policy/public-comments/2014/09/17/comment-00010>; Comment of Armen Vartian, *available at* <http://www.ftc.gov/policy/public-comments/2014/09/19/comment-00011>.

¹⁸ *See* Comment of Luke Burgess, *supra*.

suggested expanding the Rules' scope to incorporate the provisions of the CCPA before Congress adopted it and sent it to the President for his signature.¹⁹

3. Analysis of Public Comments

From the responses to its 2014 request for public comment, the Commission concluded that there was a continuing need for the Rules, and that the costs they impose on businesses were reasonable.²⁰ Commenters who addressed the subject supported the Rules, and no dealer or business expressed the view that they should be rescinded or revised to reduce costs. Further, the Commission noted that after the comments period closed, Congress expanded the Hobby Act's scope (addressing, among others, persons who substantially assist or support manufacturers, importers, or sellers that violate the Act's marking requirements). This change evinces Congress' conclusion that the Rules did not impose undue costs upon businesses or the public. The Commission thus concluded that both the record and Congressional action supported retaining the Rules.

Additionally, the Commission found that it was unnecessary to amend the Rules to address specific collectible items (such as "fantasy coins," as some commenters suggested) because it can address specific items as the need arises.²¹ Notably, the Commission has addressed whether coins resembling government-issued coins with date variations are subject to the Rules. *In re Gold Bullion Int'l, Ltd.*, 92 F.T.C. 196 (1978). It concluded that such coins

¹⁹ See Comment of Armen Vartian, *supra*.

²⁰ 81 FR 23219, 23220.

²¹ 81 FR 23220.

should be marked as a “COPY” because otherwise they could be mistaken for an original numismatic item.²²

B. Notice of Proposed Rulemaking with Request for Comments (2016)

While the Commission found it was unnecessary to amend the Rules to regulate specific collectible items, it observed that amendments to the Rules were necessary to bring them into harmony with Congress’ expansion of the Hobby Act. Hence, in April 2016, it solicited public comment on proposed amendments to the Rules.²³

The Commission proposed to align its Rules with the amended Hobby Act by: (1) extending the Rules’ scope to cover persons or entities engaged in “the sale in commerce” of imitation numismatic items; and (2) stating that persons or entities violate the Rules if they provide substantial assistance or support to any manufacturer, importer, or seller of imitation numismatic items, or any manufacturer or importer of imitation political items, when they know, or should have known, that such person is engaged in any act or practice violating the marking requirements set forth in the Hobby Act and the Rules. The Commission solicited comment on the regulatory burden the amended Rules might impose.²⁴

1. No Public Comments or Objections to Proposed Amendments

The Commission received no substantive comments in response.²⁵ Thus, no member of

²² See 92 F.T.C. at 223 (“[M]inor variations in dates between an original and its alleged ‘copy’ are insufficient to deprive the latter of its status as a ‘reproduction, copy or counterfeit’ of an ‘or[i]ginal numismatic item’ and do not eliminate the requirement that the latter be marked with the word ‘Copy.’”).

²³ 81 FR 23219, 23220, 23223.

²⁴ 81 FR 23220-21.

²⁵ The Commission received six comments that were non-germane; none of these comments referred or related to the Hobby Act or Rules, the proposed amendments to the Rules,

the public objected to the proposed amendments, which incorporate Congress' changes to the Hobby Act. Significantly, no commenter objected that the amendments would impose undue costs upon businesses or would not properly implement Congress' changes to the Act. As previously noted, Congress' expansion of the Hobby Act's scope appears to evince Congressional sentiment that the Act has not, and will not, impose undue costs upon businesses or the public. Having published the proposed amendments for comment and received no objection, the Commission concludes that the regulatory burden that the amendments might impose on businesses, including small businesses, is minimal.

IV. Final Amendments

The record supports modifying the Rules as the Commission proposed. As the CCPA's amendments to the Hobby Act require conforming changes in the Rules, and the record supports amending the Rules as proposed, the Commission accordingly amends the Rules' "Applicability" section, set forth at 16 CFR 304.3. The revised text of this provision is set forth at the end of this FRN.

V. Paperwork Reduction Act

The amendments to the Rules do not constitute a "collection of information" under the Paperwork Reduction Act, 44 U.S.C. 3501-3521 ("PRA"). The amendments incorporate changes made to the Hobby Act pursuant to the enactment of the CCPA. Prior to those changes, the Hobby Act already required manufacturers and importers of imitation political items and imitation numismatic items to mark such replica items (with the calendar year of manufacture or the word, "copy," respectively) so they may be identified as replicas. The disclosure

numismatic or political items, or imitations thereof. The comments expressed dissatisfaction with unwanted phone calls, used profane language, or were unintelligible.

requirement under the existing Rules and the amendments are not a PRA “collection of information” for which “burden” is evaluated and estimated as they specify the wording for proper disclosure (here, the year of manufacture or the word “copy”). *See* 5 CFR 1320.3(c)(2) (“The public disclosure of language of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within [the definition of a ‘collection of information.’]”). Moreover, extending this disclosure requirement to sellers of imitation numismatic items should not increase the burden of compliance to the extent they are selling items previously marked in compliance with the Hobby Act by manufacturers or importers. The amendments do not impose any new burden upon manufacturers and importers who produce replica items covered by the Hobby Act and Rules. Nor do the amendments impose any burden beyond that imposed by the CCPA’s changes to the Hobby Act.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601-612, requires an agency to provide an initial and final analysis of the anticipated economic impact of amendments on small entities. The RFA provides that such an analysis is not required if the agency certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603-605. As discussed below, the Commission believes that the amendments will not have a significant economic impact upon small entities that manufacture or import imitation political items or manufacture, import, or sell imitation numismatic items, although they may affect a substantial number of small entities.

In the April 2016 NPRM, the Commission’s staff estimated that approximately 5,000 retailers, manufacturers, and importers of imitation numismatic items are subject to the Rules.

81 FR 23219, 23221. FTC staff further estimated that there are fewer manufacturers and importers of imitation political items, from 500 to 2,500. *Id.* The Commission invited members of the public to estimate how many retailers, manufacturers, and importers are subject to the Rules, and received no comments in response. Commission staff understands from a prominent political memorabilia membership organization, the American Political Items Collectors, that a disclosure that an item is an imitation is built into the manufacturing process. Entities compliant with the Rules mark replica coins with “COPY,” and replica political items with the date of manufacture, when those items are made. The entities subject to these burdens will be classified as small businesses if they satisfy the Small Business Administration’s relevant size standards, as determined by the Small Business Size Standards component of the North American Industry Classification System (“NAICS”).²⁶ Potentially relevant NAICS size standards, which are either minimum annual receipts or number of employees, are as follows:

NAICS Industry Title	Small Business Size Standard
Sign Manufacturing	500 employees
Fastener, Button, Needle and Pin Manufacturing	500 employees

²⁶ The standards are available at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

Miscellaneous Manufacturing	500 employees
Miscellaneous Fabricated Metal Product Manufacturing	750 employees
Rubber Product Manufacturing	500 employees
Miscellaneous Wood Product Manufacturing	500 employees
Leather Good and Allied Product Manufacturing	500 employees
Commercial Printing	500 employees
Miscellaneous Durable Goods Merchant Wholesalers	100 employees
Book, Periodical, and Newspaper Merchant Wholesalers	100 employees
Toy and Hobby Goods and Supplies Merchant Wholesalers	100 employees
Hobby, Toy and Game Stores	\$27.5 million
Souvenir Stores	\$7.5 million
Political Organizations	\$7.5 million
Electronic Shopping	\$32.5 million
Electronic Auctions	\$38.5 million
Mail-Order Houses	\$38.5 million

From the record of this proceeding, the Commission is unable to conclude how many of the above-listed entities qualify as small businesses. The record does not contain information regarding the size of the entities subject to the Rules. Moreover, the relevant NAICS categories include many entities that do not engage in activities covered by the Rules. Therefore, estimates of the percentage of small businesses in those categories would not necessarily reflect the percentage of small businesses subject to the Rules in those categories.

Even absent this data, however, the Commission does not expect that the amendments will have a significant economic impact on small entities. As discussed above in Section V, the amendments do not impose any new costs upon persons or entities engaged in commerce concerning items that comply with the marking requirements of the Hobby Act and Rules. This document serves as notice to the Small Business Administration of the agency's certification of no effect. The Commission has nonetheless determined that it is appropriate to publish the following final regulatory flexibility analysis to ensure that the economic impact of the amendments on small entities is fully addressed.

(1) Need for, and objectives of, the amendments to the Rules.

As explained above, the amendments are intended to harmonize the Rules with the Hobby Act, as amended by the CCPA. Amending 16 CFR 304.3 extends the Rules' coverage to persons engaged in the sale in commerce of imitation numismatic items, and persons or entities that provide substantial assistance or support to any manufacturer, importer, or seller of covered items under certain circumstances. The legal basis for this amendment is the CCPA, which expanded the scope of the Hobby Act.

(2) Significant issues raised by comments in response to the proposed amendments to the Rules.

The Commission received no substantive comments from the public and no comments from the Chief Counsel for Advocacy of the Small Business Administration. Consequently, no significant issues have arisen from comments, and no changes have been made to the proposed rule in the final rule as a result of comments.

(3) A description of and an estimate of the number of small entities to which the Rules will apply.

As noted earlier, staff estimates that approximately 5,000 retailers, manufacturers, and importers of imitation numismatic items are subject to the Rules, and from 500 to 2,500 manufacturers and importers of imitation political items are subject to the Rules.

(4) *A description of the projected reporting, recordkeeping and other compliance requirements.*

The Rules impose a disclosure (marking) burden, currently estimated at 5 hours annually. The amendment is not expected to increase this burden on any person or entity subject to and in compliance with the Rules. The additional burden imposed by the amendment will result solely from the expanded scope of the Rules to cover certain additional persons and entities, consistent with the Hobby Act, as amended. As noted earlier, the disclosure burden imposed by the Rules is normally addressed in the manufacturing process, which requires graphic or other design skills for the die, cast, mold or other process used to manufacture the item.

(5) *Steps taken by the agency to minimize the significant economic impact, if any, on small entities, consistent with the stated objectives of applicable statutes.*

Commission staff have not identified any significant alternatives that would accomplish the statute's objectives while minimizing any significant economic impact on small entities. The amendment, as explained earlier, is intended to bring the scope of the Rules in line with the scope of the Hobby Act, as amended by the CCPA. Neither the Act nor the Rules exempt small entities, or impose lesser or different requirements on such entities. Such exemptions or alternative requirements would undermine the purpose and effect of the Act and the Rules, to the extent that Congress has determined by law that covered items, regardless of the size of the entity that manufactures, imports or sells them, require markings (*i.e.*, disclosures) under certain circumstances for the protection of consumers who may purchase such items.

List of Subjects in 16 CFR 304

Hobbies, Labeling, Trade practices.

For the reasons set forth above, the Federal Trade Commission amends 16 CFR Part 304 as follows:

PART 304—RULES AND REGULATIONS UNDER THE HOBBY PROTECTION ACT

1. The authority citation for this part continues to read as follows:

AUTHORITY: 15 U.S.C. 2101 *et seq.*

2. Revise § 304.3 to read as follows:

§ 304.3 Applicability.

Any person engaged in the manufacturing, or importation into the United States for introduction into or distribution in commerce, of imitation political or imitation numismatic items shall be subject to the requirements of the Act and the regulations promulgated thereunder. Any person engaged in the sale in commerce of imitation numismatic items shall be subject to the requirements of the Act and the regulations promulgated thereunder. It shall be a violation of the Act and the regulations promulgated thereunder for a person to provide substantial assistance or support to any manufacturer, importer, or seller of imitation numismatic items, or to any manufacturer or importer of imitation political items, if that person knows or should have known that the manufacturer, importer, or seller is engaged in any practice that violates the Act and the regulations promulgated thereunder.

By direction of the Commission.

Donald S. Clark
Secretary.

[FR Doc. 2016-24880 Filed: 10/13/2016 8:45 am; Publication Date: 10/14/2016]